



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2005

Ms. Lydia L. Perry  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2005-03324

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222264.

The Lewisville Independent School District (the "district"), which you represent, received a request for any and all records relating to a district employee. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). In this instance, the release of the Form I-9 that you have submitted as Exhibit F would be "for purposes other than for enforcement" of the applicable federal law. A Form I-9 may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the Form I-9 must be withheld under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.

Section 552.101 also incorporates section 21.355 of the Education Code. This section provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* Open Records Decision No. 643 at 4. We also determined that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You state that the information submitted as Exhibit B consists of evaluations of a teacher or administrator. Based on your representation and our review of the information in question, we agree that it is confidential under section 21.355 of the Education Code. Therefore, the district must also withhold the information in Exhibit B under section 552.101 of the Government Code.

Section 552.102(b) excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” Gov’t Code § 552.102(b). This section further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. Therefore, except for the information that reveals the degree obtained and the courses taken, the district must withhold the college transcripts in Exhibit C under section 552.102(b).

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the district’s receipt of this request for information. The district may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election for confidentiality under section 552.024.

You inform us that the highlighted information in Exhibit D relates to an employee who elected privacy under section 552.024. The submitted documents reflect that the employee

did so prior to the district's receipt of this request for information. We therefore agree that the highlighted home addresses and telephone numbers, social security number, and family member information in Exhibit D are excepted from disclosure under section 552.117(a)(1). We have marked other information in Exhibit D that must also be withheld under this exception.

Section 552.130 excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The Texas driver's license number in Exhibit D and the Texas driver's license in Exhibit E must be withheld under section 552.130.

In summary: (1) the district must withhold the Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (2) the evaluations must be withheld under section 552.101 in conjunction with section 21.355 of the Education Code; (3) except for the information that reveals the degree obtained and the courses taken, the college transcripts must be withheld under section 552.102(b); (4) the employee's home addresses and telephone numbers, social security number, and family member information are excepted from disclosure under section 552.117(a)(1); and (5) the Texas driver's license information is excepted under section 552.130. The rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

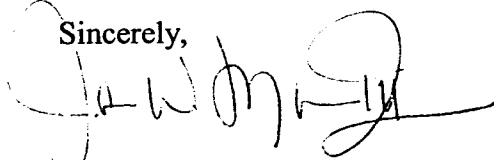
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', written over a horizontal line.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 222264

Enc: Submitted documents

c: Mr. Kirk Selby  
402 East Highway 121, Lot #122  
Lewisville, Texas 75057  
(w/o enclosures)